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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116

REPLY COMMENTS OF CENTER FOR DIGITAL DEMOCRACY, EDGEMONT NEIGHBORHOOD COALITION AND MIGRANT LEGAL ACTION PROGRAM

The Center for Digital Democracy ("CDD"), Edgemont Neighborhood Coalition and the Migrant Legal Action Program ("CDD, *et al.*" or "Commenters")[1], through undersigned counsel,

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[1]The Center for Digital Democracy is a Washington, DC-based organization that is dedicated to ensuring that all Americans have access to new interactive technologies. The Edgemont Neighborhood Coalition is a non-profit community organization located in Montgomery County, Ohio. The group is comprised of residents of Edgemont, a low-income African-American neighborhood in Dayton, who operate a community computer center where residents are able to access computer and telecommunications technology. The Edgemont Neighborhood Coalition also works to ensure that its community has access to affordable telecommunications services. The Migrant Legal Action Program is a national advocacy and

hereby submit the following reply comments in response to the Commission's Notice of Proposed Rulemaking, FCC 01-145, released May 8, 2001. In its initial comments, CDD, et al. focused on the consumer harm that results when dial-around and prepaid card carriers claiming to offer low per-minute rates add exorbitant "USF fees" to customer accounts. Due to the transient nature of dial-around and prepaid card services, these charges often cause serious customer confusion and little opportunity for customer recourse. CDD, *et al.* believe that the cornerstones of the Universal Service Fund ("USF") are maintaining an adequate pool of funds to support and expand universal service activities, while also ensuring that USF fees are not unfairly or arbitrarily passed through to end users.

Accordingly, in its reply comments, CDD, *et al.* focus on three central issues raised in the initial comments. First, CDD, *et al.* oppose the imposition of a per-line USF fee, as suggested by several parties. Such a per-line fee would likely have the effect of disproportionately increasing rates for customers who utilize dial-around, prepaid card, and other low volume services. Second, CDD, *et al.* respond to certain parties who urge the Commission to allow maximum flexibility to assess "USF fees" on end users. In light of the abuse noted in our initial comments, CDD, *et al.* strongly believe that the Commission must prohibit the separate assessment of "USF fees" by dial-around and prepaid card providers. Finally, CDD, *et al.* also respond to several parties who oppose the Commission's tentative proposal to prohibit carriers from assessing universal service contribution fees on Lifeline customers.

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support center located in Washington, DC that has provided legal representation for migrant and seasonal farmworkers since 1970.

I. The Imposition of a Flat Per-Line USF Fee Will Disproportionately Impact Dial-Around, Prepaid Card and Other Low Volume Users of Telecommunications Services

While the majority of commenters suggested that the Commission retain its current methodology requiring USF contributions based on a percentage of billed revenue, a few parties suggested that the Commission shift to a per-line or per account contribution system. Telstar International, Inc. ("Telstar"), for example, comments that the current gross revenues method "imposes onerous administrative, accounting and financial costs on reporting carriers" due to varying collection rates among customer bases.[2] Accordingly, Telstar suggests that the current system be replaced "with a system based on a flat-fee multiplied by the number of end user lines served by that carrier."

On the other hand, Sprint Corporation ("Sprint") and the Ad Hoc Telecommunications Users Committee ("Ad Hoc") suggest that the current system be replaced with a flat-fee that would be levied by local exchange carriers ("LECs") based on the number of lines served by the carrier.[3] Sprint claims that such a flat per-line fee is "an equitable and competively neutral method of paying for universal service."[4] Similarly, Ad Hoc claims that such a flat fee would foster efficiencies and would be "administratively less burdensome."[5]

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[2]Telstar International, Inc. Comments at 5-6 (hereinafter "Telstar Comments").

[3]*See* Sprint Corporation Comments at 8-10 (hereinafter "Sprint Comments"); Ad Hoc Telecommunications Users Committee ("Ad Hoc Comments") at 26-27.

[4]Sprint Comments at 13.

[5]Ad Hoc Comments at 26-27.

CDD, *et al.* strongly oppose the imposition of a per-line or per-account fee of the type supported by Telstar. While it is not clear that Telstar's proposal would apply to prepaid card accounts, it does appear that it would apply to dial-around services because those carriers would report customers as "end user lines served by that carrier." Accordingly, a customer using a dial-around carrier for even a one minute interstate phone call would incur the fee. To the extent that consumers utilize multiple dial-around carriers during a billing period, they could incur multiple "USF fees." Because many immigrant and other low-income customers utilize multiple dial-around services to find the lowest interstate and international rates, such a per-line fee would disproportionately impact immigrant and low income customers utilizing dial-around services. Accordingly, Telstar's suggestions should be rejected.

While Sprint and Ad Hoc's proposals appear somewhat more innocuous, CDD, *et al.* oppose them as well due to their disproportionate impact on immigrant and low-income telephone users. While the Sprint and Ad Hoc proposals would eliminate the possibility, discussed above, of imposition of "USF fees" by multiple dial-around carriers, it would still impose a higher burden on low-volume telephone users. For example, if a LEC passed through a per-line charge of $2.00 per month to a consumer who completed 100 minutes of interstate or international calls a month "billed" at $0.10 a minute, the customer would effectively end up paying $0.12 a minute for those calls as a result of the shift to the LEC-imposed per-line charge. A business customer, on the other hand, who completed 1000 minutes of interstate or international calls a month billed at $0.10 a minute would only incur an effective rate of $0.102 a minute. Accordingly, due to the significant impact that the Sprint and Ad Hoc proposals would have on immigrant, low-income and other low-volume users, the Commission should reject their proposals, and retain the current gross-revenue assessment system.[6]

II. The Substantial Consumer Harm Caused By Exorbitant USF Fees Charged by Many Dial-Around and Prepaid Card Providers Far Outweighs Carrier Arguments for Billing Flexibility

The majority of parties filing comments did not respond or object to the Commission's proposal to limit carrier flexibility in recovering USF contributions. Several carriers, however, opposed any Commission action in this area. IDT Corporation, for instance, states that "[t]he rate a carrier charges for USF remittance, like the rate it charges per minute of use, is a term of service consumers must consider when choosing a service provider."[7] Excel Communications, Inc. similarly states that "[f]lexibility and discretion allow carriers to choose whether to recover USF fees through increased rates or by a specific line-item charge on customer's bills."[8]

Unfortunately, the fact remains that this billing "flexibility" used by a number of carriers is inherently misleading and confusing to most consumers. This is especially true in the case of dial-around and prepaid card providers whose appeal is based almost solely on the low per-minute rates that are prominently displayed in advertising materials. At the same time, information regarding "USF" and other fees is buried in fine print or not displayed at all.[9]

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[6]Furthermore, even if the Commission were to prohibit the "pass-through" to consumers of a USF "per line" charge by LECs, such a charge would almost inevitably be imbedded in the overall cost of local telephone service, which would have the same practical effect as the imposition of a separate line item.

[7]IDT Corporation Comments at 7 (hereinafter "IDT Comments").

[8]Excel Communications, Inc. Comments at 10 (hereinafter "Excel Comments").

[9]*See, e.g.* CDD, *et al.* Comments at Exhibits A-D (providing examples of potentially confusing and deceptive Internet notices regarding the application of "USF fees" for customers of

Accordingly, the addition of "USF fees" to the advertised per minute rates has the practical effect of increasing the low per-minute rates advertised by many carriers to levels that are often exorbitant.

Furthermore, the transient nature of dial-around services makes it very difficult even for customers who actively seek information on "USF fees" levied by providers. Contrary to the assertions of IDT and Excel, customers who utilize dial-around providers often do not receive a clear explanation of fees until they receive one or more billing statements, unlike customers who presubscribe to a specific carrier by executing a letter of agency ("LOA") or similar agreement.[10] Accordingly, it is difficult and, in some cases, nearly impossible for consumers to determine a dial-around carrier's "USF fee" until they have actually received a billing statement.

Customer confusion regarding prepaid calling cards is often even worse. Like dial-around providers, prepaid calling card providers often highlight low per-minute or per-unit calling rates, while providing minimal or no information regarding fees, such as a USF surcharge, associated with the card. In addition, prepaid calling card users do not receive any billing statement or itemization of charges, making it nearly impossible for many users to

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certain dial-around services).

[10]The Commission has previously recognized the unique nature of dial-around services by exempting dial-around services from mandatory detariffing in orders implementing mandatory detariffing of other interstate interexchange services. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 15 FCC Rcd 22321, 22331, ¶ 27 (2000) ("The casual calling services that may continue to be tariffed are those services for which the customer and carrier do not have an underlying contractual relationship because of the unique technological concerns with dial-around services that are not conducive to the establishment of a written contract.").

calculate the actual per-minute cost of a call.[11] The lack of any itemization also makes it nearly impossible for customers to complain to the provider or regulatory agencies when egregious surcharges are levied.

Rather than promoting competition, the addition of USF fees and surcharges to dial-around and prepaid card only serves to confuse consumers, and allows carriers to advertise rates that are, in some cases, lower than the cost of the actual service. This, in turn, harms other dial-around and prepaid card carriers that actually advertise the true cost of service. Due to the unique nature of dial-around and prepaid card services, which almost always compete on price alone, consumers must have access to clear, non-misleading information regarding the true per-minute cost of these services. Accordingly, CDD, *et al.* urge the Commission to prohibit the imposition of separate "USF fees" by dial-around and prepaid calling card providers.[12] In the alternative, should the Commission decline to accept this proposal, the Commission should, at the very least, limit recovery of the USF contribution by dial-around and prepaid card providers to the applicable quarterly USF contribution factor.

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[11]*See* Jill Oestreicher, *Phone Cards Beneficial, But Beware of Hidden Costs*, DES MOINES REG., Aug. 13, 2000, at 5 (noting that itemized billing statements for prepaid calling cards are very hard to obtain, and recommending that customers keep " a record of calls, similar to a checkbook register" in order to monitor costs and fees).

[12]For the purpose of the comments, CDD, *et al.* focuses solely on the imposition of "USF fees" by dial-around and prepaid calling card providers. However, CDD, *et al.* have reviewed the comments of the National Association of State Utility Consumer Advocates ("NASUCA") and the West Virginia Consumer Advocate, and would support, in the alternative, their proposal to prohibit the imposition of separate "USF" line item charges by all carriers. *See* NASUCA Comments at 2; West Virginia Consumer Advocate Comments at 4-5.

III. The Imposition of USF Fees on Lifeline Subscriber Should Be Prohibited

In their initial comments, a few carriers, including IDT, Excel and Arch Wireless, Inc. ("Arch") commented that the Commission should reject any proposal to prohibit recovery of USF contributions from Lifeline subscribers. While CDD, *et al.* did not comment on this issue in its initial comments, CDD, *et al.* is compelled to address this issue now due to its potential impact on Lifeline subscribership.

The comments urging the Commission to reject a prohibition on recovery of USF contributions from Lifeline subscribers focused on potential administrative difficulties associated with such a program.[13] Specifically, many carriers focused on the potential problem of identifying Lifeline subscribers.[14] Others commented that the proposal would result in the inequitable distribution of the universal service burden on non-Lifeline subscribers.[15] CDD, *et al.* believe that these concerns, while legitimate, can be easily addressed.

With regard to administrative issues, CDD, *et al.* support a two-pronged solution. First, interexchange carriers could add a line-item to their LOAs or presubscription agreements informing prospective customers that Lifeline recipients are exempt from payment of USF contributions, and ask those customers to identify themselves and enclose some form of verification, such as a local phone bill, identifying their Lifeline status. Existing customers could

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[13] *See* IDT Comments at 8 (stating that "non-LECs cannot readily identify Lifeline customer revenues, lines or accounts"); Excel Comments at 12 ("Exempting Lifeline customers from USF fees puts an undue burden, in terms of cost and administration, on the carriers"); Arch Wireless Comments at 6.

[14] *See id.*

[15] *See* IDT Comments at 7-8.

be notified through bill inserts or notices, and could notify a carrier in a similar manner. Once notified, those carriers that add a separate line-item for USF, that line-item could simply be delete that line-item on Lifeline accounts. Alternatively, for carriers that include USF contributions in their rates, a discount equivalent to the USF contribution factor could be given for identified Lifeline accounts.

For services that do not involve presubscription agreements, such as dial-around and prepaid card services, CDD, *et al.* acknowledge that identification of eligible Lifeline subscribers would be difficult. In the case of these services, CDD, *et al.* believes that a prohibition on the separate recovery of "USF fees," as discussed above, would have the most positive effect because it would at least allow Lifeline and other subscribers who utilize those services to shop for the true lowest per-minute price for a given service.

CONCLUSION

CDD, *et al.* believe that the Commission should take swift action to end abusive and unfair USF recovery practices. To that end, CDD, *et al.* advocate three main courses of action. First, the Commission should reject any attempt to impose a flat rate line or account charge to recover USF contributions. Second, the Commission should prohibit the separate recovery of "USF fees" by dial-around and prepaid card providers. Third, the Commission should prohibit carriers from recovering USF contributions from Lifeline customers.

Respectfully submitted,

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Dated: July 9, 2001

CERTIFICATE OF SERVICE

I, Elizabeth Jalley, hereby certify that I have this 9th day of July, 2001, mailed by First Class mail, postage prepaid, a copy of the "Reply Comments of the Center for Digital Democracy, Edgemont Neighborhood Coalition and Migrant Legal Action Program" to the following:

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